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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the American Association of Jurists,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

THE RIGHT TO DEVELOPMENT

The World Trade Organization: impartial arbiter in international economic relations or a tool of the major powers and transnational corporations?

The beginnings of an answer to the question in the heading can be found by studying some of the agreements reached in Marrakesh in 1994 at the same time as the World Trade Organization and the dispute settlement bodies (DSBs) were established.

I The Agreement on Textiles and Clothing

The existing multi-fibre arrangements are intended to place restrictions on the export of clothing and textiles from developing countries to developed countries. The multi-fibre arrangements (which basically protect the textile industry in developed countries) cost consumers in the countries of the Organisation for Economic Co-operation and Development (OECD) thousands of millions of dollars – especially consumers on the lowest incomes, who spend a large part of their incomes on clothes. According to an official report from the United States in 1988, the protection of the textile industry was costing every household in the country between $200 and $400 a year.

It should be pointed out that the job losses in the textile industry in the developed countries are above all the consequence of technological changes, not of competition from the textile industry in developing countries. The objective of the multi-fibre arrangements is not to protect jobs but to protect investments.[1]

The principal beneficiaries of the multi-fibre arrangements are transnational corporations, which are in a "win-win" situation: on the one hand, as privileged exporters (setting up in the export processing zones of poor countries, where they take advantage of cheap labour in general and that of women and children in particular) and on the other as importers, also benefiting from preferential tariffs, in the developed countries.[2]

The 1994 GATT Agreement on Textiles and Clothing provides for the complete elimination of the multi-fibre arrangements in 10 years, in four stages related to the total imports of these goods. This means that imports between OECD countries, which are not covered by the multi-fibre arrangements, are included in "liberalization", which allows OECD countries first to "liberalize" trade among themselves, and as the biggest stage (49 per cent) is due in 2005, the developing countries will theoretically benefit from the liberalization of trade in textiles and clothing only on that date, although before then more changes may occur in the international trading conditions for those products, under pressure from the big transnational corporations.

The Agreement also provides for safeguards, anti-dumping measures, transitional safeguards, etc. In the first few months of 1994 the European Union imposed some 20 anti-dumping measures on textile products from new exporters such as India and Pakistan.[3]

This may explain the developed countries' great interest at present in the introduction of a social clause into trade agreements. Their interest is clearly economic and their aims protectionist; they have not developed a sudden concern for social matters.

Notwithstanding the hypocrisy of those who now appear to be so concerned about the labour situation in Third World countries (child labour, etc.) while at the same time advocating "flexibility" in existing labour standards, the problem of working conditions in many Third World countries is real and requires energetic action by the relevant organizations, especially the International Labour Organization.

II The General Agreement on Trade in Services

This agreement accounts for the lion's share of the Final Act of the Uruguay Round, signed in Marrakesh, and works to the advantage of the big transnational service corporations operating in the areas of finance, communications, transport, information technology, audiovisual services, advertising, insurance, pensions, food, distribution of goods, hotels, tourism, etc., who dominate those areas of activity.

The value of international trade in services, including trade carried out by means of direct investment, is estimated at $3 trillion ($3 million million), almost the same as international trade in goods ($3.6 trillion).[4]

The General Agreement on Trade in Services (GATS) is quite separate from the General Agreement on Tariffs and Trade (GATT). This prevents "cross-negotiation", for example, a developing country may not set as a condition for opening its borders to services the opening of the other party's borders to its own products. The Final Act does allow, on the other hand, "cross-retaliation", that is, a major power may close its borders to goods from a developing country if the latter does not comply with the "liberalization" of services.[5]

III The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement)

The winds of "liberalization" subside when they reach this agreement, as it deals with monopolistic and oligopolistic property (which is in the hands of the transnational corporations), cutting-edge technologies and many trademarks and patents, which are the source of huge profits. For this reason, no agreement was ever reached in the talks that went on for years in the United Nations Conference on Trade and Development (UNCTAD) on the adoption of an international code of conduct on the transfer of technology, and now the TRIPS Agreement has been adopted, firmly establishing that economically useful knowledge is private property.

The term of protection conferred by a patent has been set at 20 years (art. 33) and that for trademarks is indefinite (seven years renewable indefinitely, art. 18), which means an excessive delay before new knowledge passes into the public domain, to the exclusive advantage of patent-owners, which are mostly transnational corporations.

It is argued that long-term protection of owners encourages them to invest in research, but this is to forget three things: (1) quite a lot of investment in research is paid for by the State (in other words the taxpayer), (2) the profits from the marketing of knowledge (which are usually exorbitant, as in the case of basic drugs in the pharmaceutical industry) offset the owner's investment in research and begin to produce huge net profits in very short periods of time, (3) new knowledge is the result of the combined work of scientists, technicians and workers, so

that it is debatable whether it belongs exclusively to those who invested money in the research (if indeed they invested money and were not simply taking advantage of public investment).

Moreover, the Agreement covers the patenting of life forms (art. 27, para. 3 (b), on micro-organisms), which implies, among other things, an infringement of international patent legislation[6] and the possible appropriation by private individuals of traditional knowledge and methods that are part of the common heritage of different peoples.

The TRIPS Agreement has highlighted the already visible negative aspects of technology transfer and, contrary to the optimistic forecasts based on neoliberal ideology, will widen the technological gap between the industrialized countries and the developing countries to the detriment of the development of the latter and will affect basic human rights such as the rights to health and to sufficient food.

IV Dispute settlement bodies (DSBs)

(1) These are characterized by their lack of transparency, since they are made up exclusively of civil servants, meet behind closed doors and are accountable to nobody. Representatives of citizens, consumers, peasants' organizations, workers, professionals, the academic and scientific community, etc., take no part at all in them.

(2) The DSBs become involved in all manner of subjects (agricultural policy, intellectual property, etc.), so that their decisions can affect national policies in those areas. For example, they can force countries to accept the marketing of products containing genetically modified organisms (GMOs), in violation of the precautionary principle adopted at the United Nations Conference on Environment and Development.[7]

(3) The system of consensus is nothing but a sham, since the important decisions are in fact taken by the major powers (the "Group of Four" – the United States, Canada, Japan and the European Union), as in the case of the Blair House Agreement.

V Conclusions

In general, the content of the Agreements clearly favours the major industrialized countries and there are no real counterbalances to the de facto dominance of transnational corporations and the major powers in the international economy and finance.

The United States, whose transnational corporations are the major beneficiaries of these Agreements, has nevertheless reserved the right to withdraw from WTO if a special group of five federal judges finds that three decisions have been taken that negatively affect that country's interests within a period of five years.[8]

Notes

[1] UNCTAD, "The outcome of the Uruguay Round: an initial assessment", New York, 1994, p. 109.

[2] Messerlin, Patrick, "La nouvelle Organisation Mondiale du Commerce", Paris, Dunod, 1995, p. 124, note 1.

[3] Ibid., p. 132.

[4] Ibid., p. 214.

[5] Ibid., p. 253.

[6] Bertrand, Agnès, "Comment peut-on breveter la vie?", in GATT/WTO symposium, 17-18 November 1995, Centre Europe – Tiers Monde.

[7] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-4 June 1992, Rio Declaration on Environment and Development, Principle 17 (A/CONF.151/26/Rev. 1 (Vol. 1)).

[8] Davide Mortellaro, Isidoro, "Le instituzione della mondializzazione", in Pietro Ingrao and Rossana Rossanda, eds., *Appuntamenti di fine secolo*, Manifestolibri, Rome, 1995, p. 254, note 21, and Messerlin, op. cit., p. 310.